

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 672 OF 2022

Umesh Garibya s/o Shrawan Tumbwade **Versus** State of Maha., thr. PSO., PS Wardha (City), District Wardha.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.M.Daga, Counsel for the applicant.

Shri T.A.Mirza, A.P.P. for the non-applicant /State.

CORAM : ANIL S. KILOR, J.

DATED : 14/07/2022.

1. The applicant is seeking bail in connection with Crime No. 2005/2019, registered with Police Station Wardha (City), District Wardha, for the offences punishable under Sections 364, 302, 201, 404 of the Indian Penal Code, 1860.

2. Shri R.M. Daga, learned counsel for the applicant submits that the whole case is based on circumstantial evidence. It is submitted that, on a suspicion, the applicant has been arraigned as accused. It is further submitted that the applicant is no way connected with the alleged offence.

3. He has drawn attention of this Court to the order passed on first bail application which was withdrawn by the applicant on showing disinclination by this Court to grant bail.

4. It is pointed out that, this Court, while allowing the applicant to withdraw the said application, granted liberty to move the application afresh within six months, if there is no effective hearing i.e. framing of charge and evidence etc.

5. He submits that, after the said order a period of about one and half year, is lapsed. However, there is no progress in the trial, except framing of charge in the month of May-2022. Accordingly, he prays for grant of bail.

6. On the other hand, learned APP strongly opposed the present application. He submits that there is recovery of Sattur from the applicant under Section 27 of the Indian Evidence Act. He further pointed out the other circumstances, like the recovery of ornaments sold by the applicant to Jeweller.

7. Accordingly, he submits that, considering the material collected by the investigating officer during the investigation and also considering the motive of the applicant he prays for rejection of the present application.

8. I have perused the Charge-sheet, Application and the Reply filed by the State.

9. This Court, while allowing the applicant to withdraw his first application, granted liberty to apply fresh if there is no progress in trial in next months six months, vide order dated 06/12/2020. Thereafter, the period of more than one and half years is lapsed. However, except

framing of charge, there is no substantive progress in the trial.

10. The applicant was arrested on 28/02/2019. Thus, he is in jail from last about two and half years.

11. As far as, circumstantial evidence is considered, *prima-facie*, it appears that in the report of missing, no suspicion was expressed by the wife of the deceased against anybody, including the present applicant. However, after ten days, while lodging the report, story of extra-martial affair of the deceased with the wife of the applicant came to be introduced. Thereafter, recovery of Sattur and Ornaments was made at the instance of the applicant. Thus, the whole case is based on a circumstantial evidence

12. Moreover, there are no criminal antecedents to the discredit of the applicant. Thus, considering the above referred factors, I am of the opinion that there is no point in keeping the applicant in jail for uncertain period particularly, when it appears that there is no possibility that the trial will be concluded in near future.

13. As far as the apprehension of the learned APP, that he may pressurize the prosecution witnesses or he may not be available for trial. The said apprehension can be redressed by putting some stringent conditions. Accordingly, I pass the following order:

- i) The criminal application is **allowed**.
- ii) It is directed that the applicant shall be released on bail in connection with Crime No.

2005/2019, registered with Police Station Wardha (City), District Wardha, for the offences punishable under Sections 364, 302, 201, 404 of the Indian Penal Code, 1860 on furnishing P.R. Bond in the sum of Rupees Twenty Five Thousand with one solvent surety in the like amount.

iii) The applicant shall not enter the territorial jurisdiction of Wardha, till the culmination of trial, except for the trial.

iv) The applicant shall provide address of the Police Station.

e) The applicant shall attend the concerned Police Station On 1st and 16th of each month between 10.00 a.m. to 12.00 noon, till the culmination of trial.

f) The State is at liberty to move application for cancellation of bail, in case of breach of any condition or the applicant repeats the similar offence.

The criminal application is disposed of accordingly.

[ANIL S. KILOR, J.]